



10-1-2022

## Recent Developments: Att'y Grievance Comm'n of Md. v. Jackson

Victoria Garner

Follow this and additional works at: <https://scholarworks.law.ubalt.edu/lf>



Part of the [State and Local Government Law Commons](#)

### Recommended Citation

Garner, Victoria (2022) "Recent Developments: Att'y Grievance Comm'n of Md. v. Jackson," *University of Baltimore Law Forum*: Vol. 53: No. 1, Article 6.

Available at: <https://scholarworks.law.ubalt.edu/lf/vol53/iss1/6>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [slong@ubalt.edu](mailto:slong@ubalt.edu).

## RECENT DEVELOPMENT

---

***ATTORNEY GRIEVANCE COMMISSION OF MARYLAND V. DAWN R. JACKSON: A NON-MARYLAND LICENSED ATTORNEY WHO ESTABLISHES A PHYSICAL OFFICE IN MARYLAND ENGAGES IN THE UNAUTHORIZED PRACTICE OF LAW. ADDITIONALLY, THE FEDERAL PRACTICE EXCEPTION IS INAPPLICABLE TO SUCH ATTORNEYS SIMPLY LICENSED IN THE DISTRICT OF COLUMBIA.***

***By: Victoria Garner***

The Court of Appeals of Maryland held that a non-Maryland attorney, who established a law office in Maryland, violated Rule 5.5 of the Maryland Code of Professional Conduct, which prohibits the unauthorized practice of law. *Att'y Grievance Comm'n of Md. v. Jackson*, 477 Md. 174, 209, 269 A.3d 252, 273 (2022). The court also held that the federal practice exception for physical presence in Rule 5.5 does not apply to attorneys licensed to practice law in the District of Columbia but are not in Maryland. *Jackson*, 477 Md. at 207, 209, 269 A.3d at 272-73.

From 2001 through 2011, attorney Dawn Jackson (“Jackson”), who was licensed to practice law in the District of Columbia, was a partner in a law firm with Maryland-licensed attorney Brynee Baylor (“Baylor”) and other Maryland-licensed attorneys. Jackson's practice within the firm focused solely on clients and legal matters arising in the District of Columbia. In 2011, after Bar Counsel began investigating Baylor for fraud, Jackson formed a new law firm with the same attorneys, save Baylor, in the District of Columbia. In 2014, she relocated the office to Prince George’s County, Maryland. Jackson continued to solely handle cases arising in the District of Columbia, while the firm’s Maryland lawyers focused on Maryland cases.

In 2015, in preparation for a disciplinary case against Baylor, Senior Assistant Bar Counsel visited Jackson and recommended procedures for Jackson to follow in order to maintain her Maryland office, including: (1) always having a Maryland attorney on staff and (2) having letterhead and business cards reflecting her jurisdictional limitations. Subsequently, Jackson placed a disclaimer on her firm’s website, letterhead, email signature, and business cards.

After receiving an anonymous complaint in 2018, Bar Counsel opened an investigation into Jackson for the unauthorized practice of law under Maryland Rules of Professional Conduct 5.5 and other rules. Ultimately, Bar Counsel determined Jackson violated Maryland Rule 5.5 and Rule 8.4 by signing two lines requesting a re-issuance of a summons in a Maryland divorce case that the Maryland attorneys in her firm handled.

In the proceedings against Jackson, Judge Lawrence V. Hill, Jr. of the Circuit Court for Prince George's County (the "hearing judge") found that Jackson only violated Rule 5.5(a) by signing the requests for a reissuance of a summons. Both parties appealed the hearing judge's ruling.

Bar Counsel contended that the hearing judge erred by failing to find more general violations of Rule 5.5. They argued that Jackson violated Rules 5.5(a) and (b) by preparing settlement sheets, determining fees for Maryland cases, and by not having a disclaimer on her office sign, in the lobby, or on her suite door. Lastly, they contended that the mere physical presence of Jackson's office in Maryland as a non-Maryland attorney violated Rules 5.5 and 8.4. In response, Jackson argued that she had not violated Rule 5.5 or 8.4 because the federal practice exception in Rule 5.5(d) authorized her to have an office in Maryland.

The Court of Appeals of Maryland reviewed the hearing judge's ruling *de novo* to determine whether Jackson violated more Rule 5.5 provisions. The court also examined whether attorneys licensed to practice in the District of Columbia are permitted to establish an office in Maryland under the federal practice exception.

Maryland Rule 8.4 prohibits misconduct generally. *Jackson*, 477 Md. at 182, 269 A.3d at 256. Maryland Rule 5.5, which prohibits the unauthorized practice of law, has four fundamental parts, three of which are relevant to the current case. *Id.* at 195-96, 269 A.3d at 264-65. Rule 5.5(a) and (b) prohibits attorneys who are not licensed in Maryland from engaging in or assisting with the unauthorized practice of law, representing themselves to the public as Maryland-barred attorneys, or establishing offices in Maryland. *Id.* at 195-96, 269 A.3d at 264-65. Rule 5.5(d)(2) provides an exception allowing an attorney licensed in another U.S. jurisdiction to provide legal services in Maryland, provided that the attorney is permitted to practice in federal court. *Id.* at 196, 269 A.3d at 265. This is the "federal practice exception." *Id.*

The Court of Appeals of Maryland first determined that Jackson did not violate Rule 5.5(a) by preparing settlement sheets and determining fees for Maryland cases. *Jackson*, 477 Md. at 201, 269 A.3d at 268. The court acknowledged the inherent difficulty in defining acts that constituted the "practice of law." *Id.* at 200-01, 269 A.3d at 267-68. However, the court concluded that performing such administrative functions did not amount to the "practice of law" because they did not involve providing legal advice or applying legal skills, principles, or knowledge. *Id.* at 202-03, 269 A.3d at 268-69.

Next, the court determined that Jackson violated Rule 5.5(b)(2) by presenting herself to the public as a Maryland attorney before she met with the Senior Assistant Bar Counsel when she had no disclaimers of her jurisdictional limitations on her letterhead, email, business cards, or website.

*Jackson*, 477 Md. at 205, 269 A.3d at 270. However, the court refused to find that Jackson violated Rule 5.5(b)(2) after she implemented the recommended changes. *Id.* The court acknowledged that because Jackson’s firm employed other Maryland-licensed attorneys, whom clients could meet with for Maryland legal matters, Jackson did not need to add disclaimers to her office signs or in the lobby. *Id.* at 205, 269 A.3d at 271.

Finally, the court determined whether Jackson’s conduct of establishing a physical presence in Maryland violated Rule 5.5(b)(1) and Rule 8.4. *Jackson*, 477 Md. at 206, 269 A.3d at 271. Jackson argued that because she limited her practice exclusively to matters arising in the District of Columbia, her practice fell within the Rule 5.5(d)(2) federal practice exception. *Id.* at 206-07, 269 A.3d at 271.

The court rejected Jackson’s argument and declined to go beyond the “plain language” of the statute and apply the exception to attorneys licensed in the District of Columbia practicing in Maryland. *Jackson*, 477 Md. at 207, 269 A.3d at 271-72. The court reasoned that the federal practice exception was adopted to recognize that federal law may preempt a state’s power to control practice inside its “geographic borders” for those whose practice is limited to federal law. *Id.* at 207-08, 269 A.3d at 272 (citing *Sperry v. Fla.* 373 U.S. 379 (1963)). The court noted that District of Columbia courts are courts of general jurisdiction, geographically located within the borders of the District of Columbia and not Maryland. *Jackson*, 477 Md. at 209, 269 A.3d at 272. Because Jackson practiced in District of Columbia courts and did not limit her practice to federal law, the federal preemption concerns were not applicable in this case. *Id.* at 209, 269 A.3d at 272-73. Therefore, the court determined that Jackson establishing her office in Maryland did not fall under the federal practice exception and violated Rule 5.5(b)(1). *Id.*

However, the court ultimately dismissed the case, ruling that because Jackson relied upon Bar Counsel’s recommendations for maintaining her office in Maryland, she would not be sanctioned. *Jackson*, 477 Md. at 225, 269 A.3d at 282. In balancing the need to protect the legal profession and the changes to the modern practice of law, the court commented that Rule 5.5 did not “reflect the reality of a modern, portable profession.” *Id.* at 212-13, 269 A.3d at 274-75. The court observed a growing trend of allowing out-of-state attorneys to establish in-state offices. *Id.* at 210, 269 A.3d at 273. The court also recognized the benefits of “professional portability” in light of the COVID-19 pandemic and technological advances allowing for remote work and instructed the Standing Committee on Rules of Practice and Procedure to consider amending Rule 5.5. *Id.* at 212-13, 269 A.3d at 275-76.

The *Jackson* decision emphasizes the difficulties raised by equating “unauthorized practice of law” solely with physical presence. The increasing possibility for attorneys to practice law and represent clients from virtually

any location due to new technology provides a solid justification for relaxing the physical presence limitations to allow for increased flexibility in the profession moving forward.